The Luxembourg Rail Protocol to the Cape Town Convention on International Interests in Mobile Equipment

UN Economic Commission for Europe
Inland Transport Committee Working Party on Rail Transport (SC.2) Seventy-third session
Geneva, 26th November 2019

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Rail Working Group
Switzerland
• Formed in 1996 at the request of UNIDROIT
• Not-for-profit global industry group based in Switzerland
• All officers and members work for free
• Over 70 direct members and hundreds via industry associations
• Over 20 contact groups around the world
• Linking up various industry stakeholders
• Dedicated to the adoption of the Luxembourg Rail Protocol to the Cape Town Convention
The current funding models

• Public finance
  ❑ Equity, state loans and grants, aid
• Public Export Finance
  ❑ ECA, state or para-statal loans or guarantees
• Private investment
  ❑ Equity and debt for private companies
  ❑ Secured debt
  ❑ Leasing
  ❑ BOT/PPP
Identifying the trends in the rail sector

- Governments cannot afford the massive investment needed in the railways
- More passenger and freight traffic must be moved to the rails for good environmental and economic reasons
- Urban rail transport is a strategic necessity
- Rail sector gradually liberalised
  - Public and Private operators
  - Open access
  - More competition – and a more competitive industry
  - More private finance
- Public and business demanding a higher quality of service
The Problems for private investors

- No common rules on debtor insolvency
- No national title or security registries
- **Identifiers unstable (from a creditor’s perspective) and inconsistent across the sector**
- Limited legal infrastructure domestically and internationally
- Repossession issues for creditors on debtor default/insolvency
- Public Policy and Public Interest
- Banks’ capital requirements and Basel II and III
- Limited commercial tracking of location and status of assets
- Additional security issues and conflict of laws when financed assets cross borders
Cape Town Convention on International Interests in Mobile Equipment (2001)

- New global system of international legal rights and priorities for secured creditors
- Common system for enforcing creditor rights upon debtor default or insolvency
- Public registry of security interests, accessible 24/7 online
- Already adopted by 79 States
The Convention Creates

• A new type of global security interest (the “International Interest”) for designated movable equipment
• Internationally recognised with established priorities
• Secures the:
  ❑ Lessor under a lease
  ❑ Creditor under a secured loan
  ❑ Vendor’s rights under a conditional sale (where title is retained)
• Applies based on seat or domicile of debtor/lessee
How the Convention works

Cape Town Convention

Protocols

Aircraft  Rolling Stock  Space Property  MAC
Aircraft Protocol

• Adopted at the 2001 Cape Town diplomatic conference
• Applies the Convention to airframes, engines and helicopters subject to some de minimis rules
• Applies the Convention also when the Airframe is registered in a contracting state at the time the security interest is created
• Extends the Convention to aircraft sales
• Operating since 2006 – now in force in 76 states plus 1 REIO (European Union)
Aircraft Protocol

- International registry based in Dublin, Ireland: registrar Aviareto, a special purpose company established by SITA,
- Supervisory Authority: ICAO in Montreal
- Under the Aircraft Sector understanding ECAs reduce their risk premiums by 10% as long as the Protocol is adopted with the recommended declarations
- Over 1 million registrations to date – on aircraft with an estimated value of over $650 Billion
- Aviation Working Group: the Aircraft Protocol will save the air transport industry $161 bn 2009 - 2030
Luxembourg Rail Protocol

• Diplomatic Conference in Luxembourg in 2007:
  • Attended by 42 states and 11 international organisations including 7 African States and SADC
  • Sponsoring intergovernmental organisations UNIDROIT and OTIF – OTIF is the secretariat to the Supervisory Authority
Luxembourg Rail Protocol

- Applies the Cape Town Convention to rolling stock when debtor is located in a contracting state
- International registry in Luxembourg
- Registrar responsible to contracting states
- Will introduce global unique identification system for railway equipment
The Luxembourg Rail Protocol applies to ALL Rolling Stock

• Wherever manufactured, whatever gauge and operability standards
• Broadly defined: “..vehicles movable on a fixed railway track or directly on, above or below a guideway.” This covers:
  ❑ Inter-urban and urban rolling stock
  ❑ Specialist boring and other rail mounted equipment
  ❑ Metro trains and trams
  ❑ Monorail trains and cable cars
  ❑ People movers/shuttles at airports
  ❑ Cranes and gantries at ports
  ❑ Hyperloop pods
Unique Vehicle Identification

• Rolling stock must be uniquely identifiable to register interest
• Unique Vehicle Rail Identification System (URVIS) will be established by registry regulations
• First global unique and permanent identification system for rolling stock
• 16-digit number allocated by the Registrar in Luxembourg that will never be re-used
• Affixed permanently to each item of rolling stock by the manufacturer, maintainer or keeper
The Protocol’s Status

• Adopted in 2007 (4 ratifications and active registry required to enter into force – expected during 2020)
• Appointment of Regulis SA (SITA subsidiary) as Registrar in Luxembourg in December 2014
• Ratified by Gabon, Luxembourg and Sweden (and the EU) and Kenya (hopefully) about to ratify
• Signed by Italy, Germany, France, Mozambique, Switzerland and UK - all moving towards ratification
• Also under review by many other governments.
Benefits

• Removes a significant financial burden from the government
• Liberates public and private operators to obtain private sector finance for rolling stock when needed: no government budgetary constraints nor tied funding
• Opens up non-recourse private financing of existing fleets
• Important part of a PPP strategy
• Key driver for a modal shift from road to rail
Benefits

• By introducing a common system of rules in contracting states, it protects operators and financiers where rolling stock operates across jurisdictional borders
• Encourages foreign investment in the railways
• Lowers the barriers to entry for new industry participants
• Makes railways more commercial and competitive
• Underwrites operating leases – a key win for the rail sector
• Supports new technology
**Benefits**

Some state of the art examples:

<table>
<thead>
<tr>
<th>Regenerative braking</th>
<th>Supercapacitor trams</th>
<th>Low-noise rolling stock</th>
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<tbody>
<tr>
<td>Automated train operation</td>
<td>High-speed trains</td>
<td>Automatic coupling systems</td>
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<tr>
<td>Real-time rolling stock location and diagnostic systems</td>
<td>Variable-gauge rolling stock</td>
<td>Positive train control/ERTMS &amp; other in cab signal systems</td>
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<tr>
<td></td>
<td></td>
<td>Hybrid, clean diesel &amp; hydrogen/fuel cell locomotives</td>
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Benefits

• Cheaper finance - reduces bank capital costs/margin and debt financing costs as risks decrease
• Lower Export Credit Agency (ECA) premiums (min. -10%)
• Eliminates complex documentation and structures
• Recent Oxera studies on direct micro-economic savings of the Rail Protocol:
  ➢ € 19.4 bn for 20 European states
  ➢ € 13.9 bn for 9 “1520” states
  ➢ € 1.3 bn for South Africa
• Lowers the barriers to entry for new industry participants
• Macro economic benefits come on top
Europe

FINANCIAL BENEFITS

20 countries
€19.4bn total benefits

- Refinancing: 16%
- Freight: 12%
- New deliveries: 84%
- Passengers: 88%

Financial savings by country in billions of Euros:
- UK: 3.5
- FR: 2.7
- CH: 1.5
- DE: 3.9
- IT: 1.2
- ...
Benefits

• URVIS
  - One system applicable worldwide on all rail assets
  - Real-time tracking of condition and location of assets domestically and in other jurisdictions (and tracks)
  - Facilitates more efficient asset management
  - Underwrites customised predictive maintenance
  - Makes lifetime asset management and costs much easier for operators, manufacturers and financiers
Benefits

• URVIS
  ❑ Important for immatriculation – admission to rail system
  ❑ Will support regional regulatory co-operation and interoperability systems
  ❑ Defence against fraud on purchasers and creditors of rolling stock
  ❑ Key element of AI/autonomous operation
URVIS Open Issues

• Industry to decide
• URVIS number must be “affixed to the item of railway rolling stock” (LRP, Article XIV)
  ❑ Who affixes?
  ❑ How is it affixed?
  ❑ Is it permanent – and how permanent?
• Type, size, location and cost of identifier
• Readability?
• Legal liabilities
URVIS Open Issues

- Transparency: accessibility to operations, status and location data for rolling stock for
  - Operator
  - Creditor(s)
  - Regulator(s)
  - Manufacturers
  - Police and security services?
  - Press?
  - Public/competitors?
- Removing access
URVIS Open Issues

• Does it matter? Yes!
• We need protocols answering these questions
  a) Simple
  b) compatible with best industry practice
  c) At minimal cost
  d) With maximum flexibility to modify as industry practice changes
• We need advice from experts (Luxembourg Proposal)
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